

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**JASON LEASURE, an individual;**

**Plaintiff,**

**v.**

**UNITED STATES DEPARTMENT OF  
ENERGY; and DOES 1 through 10,  
inclusive;**

**Defendants.**

) **CASE NO.:** 3:19-cv-00513

)

) **COMPLAINT FOR VIOLATION OF  
THE FREEDOM OF INFORMATION  
ACT**

)

)

)

)

)

)

)

)

Plaintiff, Jason Leasure ("Plaintiff") alleges:

**PRELIMINARY ALLEGATIONS**

**The Parties**

1. The Plaintiff, Jason Leasure is an attorney residing in Cabell County, West Virginia, who made a Freedom of Information Act ("FOIA") request to the United States Department of Energy.

2. Defendant, United States Department of Energy is a cabinet-level department of the United States Government with its headquarters in Washington, D.C., and is an agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1).

3. Plaintiff is informed, believes and thereupon alleges that each of the Defendants and Does 1 through 10, inclusive, are responsible for the events and occurrences referred to herein, as well as the damages alleged. The true names and capacities of the Defendants sued herein as Does 1 through 10, inclusive, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names. Plaintiff will seek leave of court to amend this complaint to allege the true names and capacities of the Doe Defendants when they have been ascertained.

### **Jurisdiction and Venue**

4. This Court has personal jurisdiction and subject matter jurisdiction over this action pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue is proper in the Southern District of West Virginia pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff, Jason Leasure resides in the Southern District of West Virginia.

6. Plaintiff, Jason Leasure has exhausted all applicable administrative remedies pursuant to FOIA, 5 U.S.C. § 552(a)(6)(C)(i).

### **Statement of Facts**

7. Plaintiff, Jason Leasure is an attorney practicing law in West Virginia and Ohio, who resides in the Southern District of West Virginia. Plaintiff, Jason Leasure made a FOIA request to the U.S. Department of Energy.

8. The Freedom of Information Act, 5 U.S.C. § 552, generally states that federal agencies shall make requested records promptly available to any person who makes a proper request. 5 U.S.C. § 552(a)(3). If an agency denies all or part of a FOIA request, it must do so under the statutorily designated exemptions. 5 U.S.C. § 552(b). There are nine statutory exemptions provided in 5 U.S.C. § 552(b):

- (b)(1) National Security Information
- (b)(2) Internal personal rules and practices
- (b)(3) Information Exempt under other laws
- (b)(4) Confidential Business Information
- (b)(5) Privileged Agency Communications
- (b)(6) Personal Privacy
- (b)(7) Law Enforcement Records
- (b)(8) Financial Institutions
- (b)(9) Geological Information

9. Plaintiff, Jason Leasure made his first FOIA request to Defendant, United States Department of Energy on May 31, 2019. *See Exhibit A.* In it, Plaintiff, Jason Leasure requested the following information from Defendant, United States Department of Energy:

I request the opportunity to inspect or obtain copies of records, files, and scientific testing data/results that relate in any way to each and every air sampling station that is/was installed, owned, operated, inspected, maintained or utilized by the Department of Energy which are/were located within ten miles of the perimeter of the Portsmouth Gaseous Diffusion Plant in Piketon, Ohio. This request specifically includes all data from January 1, 2009 to present.

*Id.*

10. Plaintiff, Jason Leasure sent a second, separate FOIA request by certified mail to Defendant, United States Department of Energy on June 3, 2019. *See Exhibit B.* In it, Plaintiff, Jason Leasure requested the following information from Defendant, United States Department of Energy:

I request the opportunity to inspect or obtain copies of all test results for all tests which were performed within the last three years at or near Zahn's Corner Middle School, located in Piketon, Ohio. Tests results herein include all sampled media, including but not limited to, air, water, soil, dust, liquids, surfaces and the like.

*Id.*

11. The first FOIA request, for the letter dated May 31, 2019, was received by Defendant, United States Department of Energy on June 4, 2019. *See Green Card*, attached hereto as *Exhibit C*.

12. The second FOIA request, for the letter dated June 3, 2019, was received by Defendant, United States Department of Energy on June 7, 2019. *See Green Card*, attached hereto as *Exhibit D*.

13. Defendant, United States Department of Energy has never acknowledged receipt of either of these FOIA requests.

14. Defendant, United States Department of Energy did not make a determination with regard to Plaintiff, Jason Leasure's FOIA requests within the 20 business-day statutory requirement contained in 5 U.S.C. § 552(a)(6)(A)(i).

15. As Defendant, United States Department of Energy did not respond to these FOIA requests within the 20 business-day statutory requirement, Plaintiff, Jason Leasure has exhausted his administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

**CAUSE OF ACTION**

**(Violation of FOIA against Defendant, United States Department of Energy,  
and DOES 1 through 10, inclusive.)**

16. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 15, inclusive.

17. Defendant, United States Department of Energy is an agency subject to FOIA, 5 U.S.C. § 552. In response to a FOIA request, Defendant must release any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any materials as to which they claim an exemption, 5 U.S.C. § 552(a)(3).

18. Plaintiff, Jason Leasure made proper FOIA requests to Defendant, United States Department of Energy.

19. Defendant, United States Department of Energy has violated FOIA, 5 U.S.C. § 552(a)(6)(A) by failing to produce or providing a valid reason for not producing the records requested by Plaintiff, Jason Leasure.

20. Plaintiff, Jason Leasure has exhausted the applicable administrative remedies with respect to his FOIA requests.

21. Plaintiff, Jason Leasure is entitled to relief compelling the processing and disclosure of the requested agency records.

**WHEREFORE**, the Plaintiff prays for judgment against Defendants as follows:

1. Ordering the Defendants immediately to process and release all records responsive to Plaintiff's FOIA requests;
2. Declaring that any of Defendants' stated reasons, if any, for denying access to records is in violation of FOIA;
3. Declare that the Defendants' failure to search for and disclose the records requested by Plaintiff is unlawful and in violation of FOIA;
4. Awarding Plaintiff's attorney's fees, court costs and all other reasonable costs incurred pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
5. Granting Plaintiff such other and further legal and equitable relief as the Court may deem just and proper.

Dated: 11th day of July, 2019

UNDERWOOD LAW OFFICES

By:



J. Patrick L. Stephens, WVSB #10262  
923 Third Avenue  
Huntington, WV 25701  
Telephone: (304) 522-0508  
Facsimile: (304) 399-5449  
*Counsel for Plaintiff*